

**Criminal Procedure I: Investigation (Law 206)**  
**Fall 2023**  
**David A. Lord**

**I. Class Schedule**

This class will meet on Wednesdays from 6:05 p.m. to 9:00 p.m. We will have two breaks during each class. Please note that there are two Wednesdays when we are not meeting. The practical exercise described in Section VII, below stands in place of this. (This activity requires you to either do a police ride-along or an active court session and write a short paper about the events). The final exam is on December 6, 2023 at 6:00 p.m.

**II. Learning Outcomes**

By the end of the course, students will have acquired the following skill-set:

- (A) A broad understanding of the key U.S. Supreme Court jurisprudence in 4<sup>th</sup>, 5<sup>th</sup>, and 6<sup>th</sup> Amendment law;
- (B) An understanding of the interrelatedness of legal concepts involving these three amendments to the U.S. Constitution;
- (C) An appreciation of the differing viewpoints and debated concepts that apply to criminal procedure;
- (D) An ability to apply case law in this field to individual fact patterns and make cogent arguments on contested legal issues.

**III. Contact information and availability**

My email address is [dlord1@gmu.edu](mailto:dlord1@gmu.edu). I would welcome you to contact me with any questions or concerns and am happy to schedule a meeting, as needed, throughout the Fall term.

**IV. TWEN**

I will create a TWEN page for this course where the PowerPoint lectures from class will be available. These will be of substantial use to you in preparing for the exam.

**V. Required Texts and Supplemental Materials**

The required text for this class is *American Criminal Procedure: Investigative – Cases and Commentary, 12<sup>th</sup> Edition* by Stephen A. Saltzburg and Daniel J. Capra (ISBN 978-1-64708-646-6). Please note that this is a soft-bound, book with a red cover. Pay careful attention to which version you are purchasing, as these authors have a more inclusive book which includes adjudication. Students frequently ask whether they can purchase the prior edition of a book, in this case the 11<sup>th</sup> edition. While I won't prohibit that, if you elect to pursue that path, it will be your responsibility to assess where the

texts diverge and to download any cases unavailable in the older version to make sure that you are up to date on the current case law. I have identified each week the most critical cases so that you can make sure to know if there are other cases you would need to pull from another source if you are using a prior version of the textbook. You may also elect to access the listed cases and read them from some other source. These cases are the most important in criminal procedure and form the basis for exam questions, in addition to cases that will be discussed in the lectures. If you elect to do this however, please note that you may end up missing some of the material that helps create a more cohesive overall framework for understanding criminal procedure.

I am mindful of the many time constraints facing law students. For the reading each week, I've identified the pages of the material we will cover, any sections that I think could be omitted without significant harm to your understanding of the topic, and the most important cases that you need to focus on in order to master this area of the law. Some of the cases that I cite as being of significant importance do not have a full copy of the opinion in the text. If you are assigned to brief that case, you may need to do additional research in order to be able to meaningfully discuss the case in class.

## **VI. Classroom Participation and Attendance**

Generally, each class will begin with a mock motion to suppress. Two students will volunteer to act as defense attorney and prosecutor. A video will be made available prior to class involving a scenario of law enforcement interaction with a suspect. The student acting as the defense attorney will be responsible for identifying any conduct by the law enforcement officer that they believe to be legally or constitutionally problematic and will argue why it should result in the Court suppressing evidence if the suspect in the video is charged with the crime. The prosecutor will be responsible for responding to these arguments and answering whether the government can constitutionally defend the conduct at issue. All of the class will be engaged in a general discussion of the videos.

In terms of reading, every student is expected to be thoroughly engaged in class discussions about the cases. However, to reduce anxiety and improve the quality of case presentation, the cases that we plan on discussing each class will be identified in the prior session and each case will be assigned to a particular student. That student will be responsible for summarizing the facts and holding as well as offering their view of the issues. However, all students are expected to engage in conversation about the cases and are responsible for reading the decisions.

You will note that this text in many ways is part case-book and part hornbook. As a result, some of the cases that we will be discussing offer only a cursory summary in the casebook and the student assigned the case may need to access the full text of the decision online.

Please understand that it is Mason's policy that if a student is absent for *any* reason for more than 20 percent of the sessions of a course, the student is not eligible for credit in that course. A student who is not present for at least 75 percent of a session of the course is absent from that session. (AR 4-1.1.) Missing three sessions of this course would result in this provision being triggered. Please also note that while missing less than 3 courses would not result in your being precluded from receiving credit from the course, any absence will factor into class participation.

Class participation will consist of attendance, engagement in class discussion, and preparation for the class activities and case preparation discussed above. If a student is deemed to have exceptional class participation, they will be eligible to have their final grade increased one level (for example, from a B to a B+ or from a B+ to an A-), assuming it does not cause a violation of the university's mandatory curve. Similarly, the failure to meaningfully participate can result in a one step decrease on a student's grade level.

## **VII. The Final Exam and Evaluation**

The final exam will take place December 6, 2023 at 6:00 p.m. and students will have three hours to complete it. The exam will be open book. Half will consist of multiple choice and true/false questions. The additional portion will consist of an essay in which you are provided a fact pattern and asked to assess the constitutional issues in it.

Additionally, each student is required to complete either a police ride-along or attend court proceedings at least once before the day of the final and submit a four to five page written paper describing the experience and discussing anything that overlapped with what we discussed in Court. We will talk more about this activity in class and how to find an opportunity to complete this assignment that allows you a meaningful chance to explore the issues we are discussing. This activity stand in lieu of two sessions identified below. The activity is pass/fail. However, the impact on the final grade is as follows: Any student who does not satisfactorily complete the project will have their grade reduced by one level (for example, from a B to a B- or from a B- to a C+).

### **Wednesday, August 23**

Theme: Welcome/and class introductions. Introduction to the 4<sup>th</sup> Amendment. What is a search/seizure? Expectation of privacy vs. property rights view of the 4<sup>th</sup> Amendment.

Reading assignment: Saltzburg and Capra pp. 40-116.

Portions you can omit: You can elect to omit *Olmstead v. US* from your reading (43-52) along with section 5a on pages 86-88

Cases of significance

- *Katz v. United States*
- *United States v. Jones*

- Oliver v. United States
- Florida v. Jardines
- US v. Miller and Smith v. Maryland
- Kyllo v. US
- Carpenter v. US
- Illinois v. Cabales

### **Wednesday, August 30**

Theme: Obtaining a warrant and the basics of probable cause.

Reading assignment: Saltzburg and Capra 146-183

Portions you can omit: N/A

Cases of significance

- Spinelli v. US
- Illinois v. Gates
- Massachusetts v. Upton
- Maryland v. Pringle
- Florida v. Harris

### **Wednesday, September 6 – No class in lieu of the police ride along/court attendance activity.**

### **Wednesday, September 13**

Theme: Consensual encounter vs. seizure; reasonable suspicion

Reading assignment: Saltzburg and Capra pp. 118-140; 246-292

Portions you can omit: p. 130-31 (INS v. Delgado); 261-264

Cases of significance

- Torres v. Madrid
- California v. Hodari D
- US v. Mendenhall
- Florida v. Royer
- US v. Drayton
- Terry v. Ohio
- Adams v. Williams
- Pennsylvania v. Mimms
- Maryland v. Wilson

- Kansas v. Glover
- Florida v. J.L.
- Navarette v. California

### **Wednesday, September 20**

Theme: Frisks and the seizure of property; scope of the seizure; mistakes of law; search incident to arrest

Reading assignment: Saltzburg and Capra pp. 300-386

Portions you can omit: 343-359 (part will be covered next week)

Case of significance

- Heien v. North Carolina
- Minnesota v. Dickerson
- Michigan v. Long
- Maryland v. Buie
- New York v. Belton
- Arizona v. Gant
- Florida v. Royer
- U.S. v. Sharpe
- Arizona v. Hicks
- Chimel v. California
- Riley v. California
- Birchfield v. North Dakota
- Atwater v. City of Largo Vista
- US v. Place

### **Wednesday, September 27th**

Theme : Hodgepodge of special 4<sup>th</sup> Amendment issues (pretextual stops, plain view and touch, *Carroll* Doctrine, exigent circumstances.

Reading assignment: Saltzburg and Capra pp. 347-359; 387-444

Portions you can omit: N/A

Case of significance

- Whren v. United States
- Horton v. California
- Bingham City v. Stuart
- Chambers v. Mahoney

- California v. Acevedo
- US v. Chadwick
- Wyoming v. Houghton
- Schmerber v. California/Missouri v. McNeely
- Kentucky v. King

**Wednesday, October 4<sup>th</sup> – No class due to the police ride along/court observation activity**

**Wednesday, October 11<sup>th</sup>**

Theme: More 4<sup>th</sup> Amendment hodgepodge (Roadblocks, DNA, inventory searches and consent)

Reading Assignment: Saltzburg and Capra pp. 451-458; 466-467; 489-546

Portions you can omit: N/A

Cases of significance

- New York v. Burger
- New Jersey v. TLO
- Delaware v. Prouse
- Michigan Department of State Police v. Stitz
- Indianapolis v. Edmond
- Illinois v. Lidster
- Florida v. Wells
- Maryland v. King
- South Dakota v. Opperman
- Schneckloth v. Bustamonte
- Georgia v. Randolph
- U.S. v. Matlock/Illinois v. Rodriguez

**Wednesday, October 18<sup>th</sup>**

Theme: Remedies and limitations of the 4<sup>th</sup> Amendment; independent source/inevitable discovery

Reading Assignment: Saltzburg and Capra pp. 561-568; 578- 648; 657

Portions you can omit: 624-631

Cases of significance

- Weeks v. US/Mapp v. Ohio/Wolf v. California
- US v. Leon

- Massachusetts v. Shephard
- Arizona v. Evans
- Brown v. Illinois
- Utah v. Strieff
- Franks v. Delaware
- Herring v. US
- Rakas v. Illinois
- Rawlings v. Kentucky
- Minnesota v. Olson and Minnesota v. Carter
- Murray v. US
- Nix v. Williams

### **Wednesday, October 25th**

Theme: Background to the 5<sup>th</sup> Amendment; Voluntariness

Reading Assignment: Saltzburg and Capra pp. 673-742

Portions you can omit: 702-711; 717-722

Cases of Significance

- Lefowitz v. Turley
- Ohio Adult Parole Authority v Woodward/McKune v. Lile
- Fisher v. US
- Schmerber v. California
- Pennsylvania v. Muniz
- Brown v. Mississippi
- Spano v. New York
- Colorado v. Connelly
- Hiibel v. Sixth Judicial District Court of Nevada, Humboldt County

### **Wednesday, November 1<sup>st</sup>**

Theme: The Basics of *Miranda*

Reading Assignment: Saltzburg and Capra pp. 743-801

Portions you can omit: N/A

Cases of significance:

- Miranda v. Arizona
- Dickerson v. United States
- New York v. Quarles

- Oregon v. Elstad
- Missouri v. Seibert
- Harris v. New York
- Mincey v. Arizona
- US v. Patane
- Vega v. Tekoh

### **Wednesday, November 8th**

Theme: What is interrogation, what is custody, and waiver of *Miranda* rights

Reading Assignment: Saltzburg and Capra pp. 801-861

Portions you can Omit: N/A

#### Cases of Significance

- Berkemer v. McCarty
- Stansbury v. California
- J.D.B. v. North Carolina
- Rhode Island v. Innis
- Illinois v. Perkins
- Moran v. Burbine
- Berghuis v. Thompkins
- Edwards v. Arizona and Oregon v. Bradshaw
- Davis v. United States
- California v. Prysok
- Pennsylvania v. Muniz
- Arizona v. Roberts/Minnick v. Mississippi, Maryland v. Shatzer
- Michigan v. Mosely

### **Wednesday, November 15th**

Theme: The right to Counsel and the 6<sup>th</sup> Amendment ad Review Session Additional instruction will be offered on additional issues related to the identification of suspects)

Reading Assignment: Saltzburg and Capra pp. 861-894; 945-962

Portions you can omit: N/A

#### Cases of Significance:

- Massiah v. United States
- Brewer v. Williams
- US v. Henry/Kuhlmann v. Wilson



- Maine v. Moulton
- Texas v. Cobb
- Illinois v. Patterson
- Michigan v. Jackson/Montejo v. Louisiana
- Powell v. Alabama
- Gideon v. Wainwright
- Argersinger v. Hamlin
- US v. Wade/Coleman v. Alabama